

REMARKS

The rejection of claims 1 through 20 under 35 U.S.C 103(a) as unpatentable over Grzybowski et al (U.S. Patent 5,004,772) in view of Davis et al (U.S. Patent 5,612,141) and in further view of Vicenzi (U.S. Patent 4,759,799) is respectfully traversed.

U.S. Patent 5,004,772 is directed to the addition of cyclohexanone to a standard asphalt adhesive composition and further lacks teaching which would suggest the following conditions which are limitations in all of the present claims.

1. Distinction between blown and non-blown asphalts.
2. Selective use of SIS elastomer over SEBS or others (see applicants' specification page 1, lines 14-19).
3. Disclosure of SIS elastomer containing 70-80% styrene.
4. Teaching of a solvent to asphalt wt. ratio of 1-1.3-1:4; indeed the use of "solvent" in patentees' composition is optional (see col. 3, lines 30-31 and col. 4, lines 21-22).
5. Suggestion of an aromatic solvent containing 5-20% aliphatic hydrocarbon.
6. Suggestion of adding a silicate.

The key to patentees' invention is the interaction between the asphalt and elastomer in both cured and uncured adhesive achieved by the use of cyclohexanone (col. 2, lines 9-52). Additionally, it is the incorporation of the cyclohexanone which allows for adhesive preparation without the application of heat (see paragraph bridging cols. 3-4). Accordingly, this cyclic ketone (neither an aromatic or aliphatic hydrocarbon solvent), is the sole essentially novel element of patentees' invention. Conversely, to accomplish the aim of odor minimization in applicants' adhesive composition, it is essential that the aromatic solvent contain 5-20% aliphatic hydrocarbon (see specification page 1, lines 11-13 and page 5, lines 17-21). Notwithstanding applicant's omission of Grzybowski's cyclohexanone, the present composition achieves cold bonding and avoids the hazards associated with fire resulting from torching.

In view of the lack of pertinent and essential disclosure in the '772 patent, it remains for the teachings of either Vicenzi (U.S. 4,759,799) or Davis et al (U.S. 5,612,141) to make obvious the invention of applicants' claims. Since neither of these references refer to a cold bond adhesive and since neither discloses Grzybowski's cyclohexanone essential for achieving cold bonding, their compositions are not properly combined with that of the '772 patent and components are not interchangeable.

More specifically, the Davis patent is directed to a non-asphaltic adhesive tape composition based primarily on an aliphatic terpolymeric blend (EPDM). Further, the compositions of Davis et al are not cold bonding (note the curing package, col. 12, lines 26-47). Accordingly, the Davis adhesives are totally unrelated to those of applicants' claims and to Grzybowski's adhesives. Davis' brief mention of magnesium silicate among a wide selection of possible or optional fillers would not suggest combination with or addition to either the asphaltic based cold bonded adhesive of Grzybowski or the present invention selectively containing aromatic styrene block polymers.

Finally, the Vicenzi patent concerns a roof coating gel comprising essentially 80-95% asphalt and 5-20% clay, said coating additionally containing the surfactant of applicant's component (e) in claim 1. However, patentee's surfactant is employed to preserve the gel-like quality of the coating and is believed to "interact with the hollow attapulgite structure" of patentees' clay (see col. 4, lines 18-39). In applicant's composition, where a clay filler is only an optional component, the surfactant performs a different function, namely that of interaction with the metal silicate component (d) in the composition.

Furthermore, Vicenzi's gel composition is stable over long periods of storage which characteristic fails to suggest fast curing or cold bonding at ambient temperatures. The disclosure of the '799 patent also shares deficiencies 1-6 noted above in Grzybowski. It is clear that Vicenzi roof coating gel is totally unrelated to the cold bond adhesive of Grzybowski et al and substitutions in either patent in unwarranted.

SERIAL NO. 10/016,836

It is respectfully submitted that the present invention is not merely the suggested optimization of the cited art but is clearly a totally novel formulation for achieving a cold bond adhesive. It is well known that reconstruction of the prior art based on an applicant's disclosure, as is the selection of silicate from one reference and a surfactant from another reference for the purpose of substituting in a third patent directed to a cold bond adhesive, is prohibited as a basis for rejection on obviousness.

It is believed that in view of the present amendments and the above discussion this application is now in condition for allowance, notice of which is most courteously solicited.

Respectfully submitted,



Marilyn J. Maué  
Registration No. 18,869  
Agent for Applicants  
Tel. No. (973) 628-3544  
Fax. No. (973) 628-3620